IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.9772 OF 2004

Shri.Shahuram Sitaram Teli ..Petitioner

Vs.

Shri.Giridhar S.Rathi and Anr. ...Respondents

....

Mr.Amol Desai with A.K.Jalisatgi for Petitioner

....

CORAM : B.H.MARLAPALLE,J.

DATE : JANUARY 27,2005

P.C.:

1. Heard Mr.Amol Desai, the learned counsel for the petitioner. On the count of alleged illegal termination, he had approached the conciliation machinery under the Industrial Disputes Act, 1947 and accordingly, the said issue came to be referred for adjudication in Reference (IDA) No. 125 of 2001. By the impugned Award dated 15th July, 2003, the learned Judge of the IVth Labour Court at Thane, has rejected the reference on the ground that the petitioner workman could not establish the employee-employer relationship and on the other hand, he was working as transport contractor.

2. The petitioner examined himself at Exhibit-23 and on behalf of the employer one Giridhar s/o Shaligram

Rathi came to be examined at Exhibit-37. It is evident that the petitioner's relation Shaligram Rathi is the father of Shri.Giridhar Rathi the proprietor of Rathi Textiles and who is examined as employer at Exhibit-37. At Exhibit-21 document running into 48 pages, were placed on record and they were in respect of all the payments received by the petitioner from time to time. These payments were weekly or fortnightly. In his cross-examination, the petitioner admitted that the Tempo bearing No. MH-04/S-7067 was owned by him and the said vehicle was used for material transportation with Rathi Textiles as well as M/s. Kirti Fabrics, he admitted the payment receipts at Document Nos.12a and 12b. Kirti Fabrics was being run by the petitioner's relation and was subsequently handed over to Giridhar. The payment details as set out in para no.10 of the impugned Award, though indicate that the petitioner had received these amounts in respect of transport contract, the labour Court further noted that there was nothing on record placed by the petitioner himself regarding his relationship as an employee of M/s. Rathi Textiles and Chalans produced at Exhibit-21 were sufficient to prove the relationship of a contractor. The petitioner also admitted in his cross examination that he never signed the attendance register whereas other employees working in Rathi Textiles and Kirti Fabrics

were signing such attendance register. He also admitted that other employees of Kirti Fabrics were paid bonus, leave wages and overtime etc. and no such benefits were extended to him. The original payment books and receipts at page nos.22 were placed before him and he admitted that all these documents bore his signatures. He also admitted that he received these payment from 15th to 25th of every month.

3. On the face of the evidence that has been duly considered by the labour Court, it is clear that the findings recorded in the impugned Award do not suffer from any errors and therefore, there is no case made out to cause interference in the said Award under Article 227 of the Constitution of India.

4. Petition is rejected summarily.

5. Certified copy expedited.

[B.H.MARLAPALLE,J.]